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MCDERMOTT, WILL & EMERY

June 4, 1998

VIA MESSENGER

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: PR Docket 93-144; Entergy Services, Inc.'s Request for Extension of Time

Dear Ms. Salas:

On behalf of our client, Entergy Services, Inc., we have enclosed an original and ten copies of a Request for Extension of Time in the above-referenced rule making proceeding. Entergy requests that the Federal Communications Commission extend the time period in which 800 MHz General Category licensees may assign their radio station authorizations without prior construction as provided in the Second Report and Order in the above-captioned proceeding.

We ask that you date-stamp one copy of this Request, and return it to us in the enclosed self-addressed envelope. If you have any questions about this matter, please contact Tom Navin at 202-756-8093.

Cordially yours,



Shirley S. Fujimoto

Enclosure

cc: Daniel Python
Steve Weingarten
Ramona Melson

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Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

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JUN - 4 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Part 90 of the)
Commission's Rules to)
Facilitate Future Development)
of SMR Systems in the 800 MHz)
Frequency Band)

PR Docket No. 93-144

To: Chief, Wireless Telecommunications Bureau

REQUEST FOR EXTENSION OF TIME

Entergy Services, Inc., through undersigned counsel and pursuant to Section 1.41 of the Federal Communications Commission's ("FCC's" or "Commission's") rules, submits this Request for the Commission to extend the period of time for 800 MHz "General Category" licensees to assign their radio station authorizations without prior construction, as provided in the Second Report and Order ("Second R&O"), FCC 97-223, released July 10, 1997, in the above-captioned proceeding,¹ until the filing deadline specified by the Commission for submitting FCC Form 175 to participate in the Lower 230 800 MHz channel auction.

¹ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Second Report and Order*, 12 FCC Rcd 19079 ¶ 42 (1997) (the "Second R&O").

I. INTRODUCTION

On July 10, 1997, the Federal Communications Commission ("Commission" or "FCC") released the Second R&O in the above captioned proceeding. In the Second R&O, the Commission determined to temporarily waive the prohibition on assignment or transfer of unconstructed authorizations on the Lower 80 and 150 General Category channels (collectively "the Lower 230 channels") provided that where unconstructed spectrum is transferred, the assignee or transferee is subject to the same construction deadline as the transferor/assignor.² This temporary waiver is scheduled to remain in effect until six months after the conclusion of the Upper 200 800 MHz channel auction.³ The Upper 200 800 MHz auction concluded on December 8, 1997.⁴ As such, the temporary waiver of the prohibition against the assignment or transfer of unconstructed Lower 230 800 MHz radio station authorizations will expire on June 8, 1998 ("the June 8, 1998 deadline").

On May 11, 1998, Daniel R. Goodman, the court-appointed receiver for certain 800 MHz General Category licensees, filed a request ("the Goodman Request") to extend the June 8, 1998 deadline until four months after the publication in the *Federal Register* of the Memorandum Opinion and Order, In the Matter of Daniel R. Goodman, Receiver; Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission's Rules, 10 FCC Rcd 8537 (1995) ("Goodman-Chan MO&O"). Specifically, Mr. Goodman limited his request for extension of the June 8, 1998 deadline to those licensees that were

² Id. ¶ 42 n. 93. The Commission further stated, however, that it would allow licensees with extended implementation authority to apply their system-wide construction deadlines to licenses acquired by transfer that are within their pre-existing footprint. Id.

³ Id. ¶ 42.

⁴ Public Notice, 800 MHz SMR Auction Closes, DA 97-2583 (Dec. 8, 1997).

the subject of the Goodman-Chan MO&O.⁵ Entergy Services seeks similar relief to the relief requested by Mr. Goodman, but for entirely different reasons and for General Category licensees other than the Goodman-Chan licensees.

II. BACKGROUND

Entergy Services, Inc. is a subsidiary of Entergy Corporation ("Entergy"), one of the largest electric utility holding companies in the country; Entergy's other subsidiaries include five electric utility operating companies (or "OPCOs") – Entergy Gulf State Utilities, Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc. Together, the OPCOs constitute an integrated electric utility system under the Entergy umbrella which serves over 2.4 million customers. The Entergy service territory includes most of Louisiana, almost all of Arkansas, a portion of Texas and the western half of Mississippi. In order to serve the internal communications needs of the OPCOs, Entergy Services holds numerous authorizations for land mobile radio facilities in the 800 MHz frequency band.

In the early stages of developing the 800 MHz land mobile radio system, the highest priority of Entergy and its OPCOs was the licensing of 800 MHz spectrum in New Orleans (the largest city in the Entergy service area). However, despite their best efforts, the companies were unable to secure Industrial/Land Transportation, Business, Public Safety or Specialized Mobile Radio ("SMR") spectrum through the inter-category sharing process due to spectrum congestion in the other 800 MHz spectrum pools.

⁵ See Daniel R. Goodman's Request for Extension of Time at 3.

Instead, Entergy's subsidiary Louisiana Power & Light Company (now Entergy Louisiana, Inc.) requested and received a waiver of the Commission's rules to allow the utility to license over 30 General Category channels. These channels form the basis of the Entergy 800 MHz land mobile radio system since, in an effort to implement an appropriate channel re-use scheme throughout its service territory, Entergy licensed many of these same General Category channels across its service territory. Accordingly, Entergy has a substantial incumbent presence on the General Category channels in its four-state service territory.

III. ARGUMENT

The Commission should extend the time period to transfer unconstructed General Category channels because the June 8, 1998 deadline is not sufficient enough time to allow potential bidders in the upcoming General Category auction to negotiate assignments and transfers of such channels and to allow relocation from the Upper 200 channels. In the Second R&O, the Commission based its decision to temporarily waive the prohibition on the transfer of unconstructed Lower 230 channels on the need to facilitate relocation of Upper 200 licensees and to allow "potential bidders in the lower band auction to negotiate transfers as part of their pre-auction strategy."⁶ As the Commission recognized, the special circumstances surrounding the geographic area licensing of encumbered spectrum support temporary waiver of Section 90.609(b) of the

⁶ Second R&O ¶ 42.

Commission's rules.⁷

The same rationale that the Commission used to waive the prohibition on the transfer of unconstructed General Category channels in the Second R&O is equally applicable to this request for a brief extension of time to the transfer deadline: to facilitate relocation of Upper 200 licensees and to allow potential bidders to negotiate transfers as part of their pre-auction strategy. As the Commission stated, "allowing unconstructed spectrum to be transferred rapidly and efficiently to those who value it most allows development of the service to proceed and provides potential benefits to prospective bidders in the auction."⁸

At the time, the FCC decided the Second R&O, the June 8, 1998 deadline appeared to provide General Category licensees and potential bidders sufficient time to implement pre-auction strategy. However, the complexities associated with negotiating 800 MHz spectrum swaps has precipitated the need for additional time to finalize these negotiations. Accordingly, Entergy requests that the FCC extend the time for assigning or transferring unconstructed General Category channels from June 8, 1998 until the date specified by the Commission for submitting FCC Form 175 to participate in the Lower 230 channel auction.


Significantly, this request for a brief extension of time does not undermine the objectives of facilitating geographic area licensing because there is no impact on unlicensed spectrum that will be awarded to EA licensees.

⁷ Id. ¶ 40; see also WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

WHEREFORE, THE PREMISES CONSIDERED, Entergy Services, Inc. urges the Federal Communications Commission to consider this Request for an extension of time of the Second R&O's temporary waiver of the prohibition on the transfer of unconstructed General Category channels and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

ENTERGY SERVICES, INC.

By: 
Shirley S. Fujimoto
Thomas J. Navin

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600 Thirteenth Street, N.W.
Washington, D.C. 20005
202/7756-8000

Its Attorneys

Dated: June 2, 1997

(..continued)
⁸ Second R&O ¶ 44.